

In the Matter of Merchant Mariner's Document No. Z-526018 and all
other Licenses and Documents
Issued to: JERRY STRUGAR

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

977

JERRY STRUGAR

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 1 February 1957, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege in substance that while serving as an able seaman on board the American SS PRESIDENT HARDING under authority of the document above described, on or about 21 November 1956, while said vessel was in the port of Genoa, Italy, Appellant assaulted and battered a member of the crew, Walter J. Schultz (First Specification); and he wrongfully created a disturbance on the ship (Second Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the rights to which he was entitled including his right to be represented by counsel of his own choice. Appellant voluntarily elected to waive the latter right and act as his own counsel. He entered a plea of "not guilty" to the charge and both specifications.

The Investigating Officer made his opening statement. He then introduced in evidence entries in the ship's Official Logbook, the testimony of an eyewitness, James Bilk, and, without objection, the sworn statement of the person allegedly assaulted. This statement was taken in New York City on 21 December 1956 as part of the preliminary investigation after Schultz had been repatriated. Appellant stipulated that he was on board the ship for the entire voyage which terminated at San Francisco on 30 January 1957, two days before the conclusion of the hearing.

In defense, Appellant offered in evidence his sworn testimony. Appellant stated that he challenged Schultz to fight but that he was the aggressor and Appellant acted only in self defense after he had been kicked twice by Schultz. Appellant also stated that he did not remember what happened from the time he pulled Schultz out

of his bunk until James Bilk separated the two seamen.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner announced his decision and concluded that the charge and two specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-526018, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of six months.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 21 November 1956, Appellant was serving as an able seaman on board the American SS PRESIDENT HARDING and acting under authority of his Merchant Mariner's Document No. Z-526018 while the ship was in the port of Genoa, Italy.

Appellant, ordinary seaman Schultz and ordinary seaman Bilk shared the same quarters on the ship. Appellant and Bilk were quite friendly and had been ashore together on the night of 20 November as well as on other occasions. Schultz did not get along very well with either of his roommates. He had argued previously with Appellant concerning the extent of his authority as the deck department union delegate. Both Appellant and Schultz weighed about 170 to 175 pound. They were 34 and 37 years of age, respectively.

Appellant and his two roommates were preparing to turn in for the night at about 0100 on 21 November after all of them had consumed sufficient wine to make them feel "pretty good" but not drunk. Schultz was in his upper bunk when an argument started between himself and Appellant. This degenerated to vulgar name-calling by both parties and was extended by Schultz to include Appellant's immediate family in addition to himself. Thereupon, Appellant removed his watch and glasses and twice demanded that Schultz either retract the references to Appellant's family or go out on the dock with him to settle the matter. Schultz rejected both of these alternatives and remained in his bunk. Appellant approached the upper bunk, struck Schultz and attempted to pull him out of the bunk. Schultz held on to a pipe with one hand and managed twice to kick Appellant away as he kept returning to the bunk. Schultz then released his grip on the pipe while Appellant pulled on Schultz's arm. Hence, Schultz permitted himself to be pulled out of the bunk and he exchanged blows with Appellant as they grappled on the deck. Appellant got hold of a metal clothes bucket and struck Schultz on the back of the head with it. At this

point, Bilk separated the two seamen.

Schultz was bleeding profusely from the cut caused by the bucket. He received first aid treatment from the Chief Mate before being taken to a hospital in an ambulance. Schultz was hospitalized at Genoa for eight days. Four stitches were taken in his head injury. There is no evidence that Appellant suffered any injury which was sufficient to require medical treatment on board the ship or otherwise.

Appellant has no prior disciplinary record during approximately seven years at sea.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant urges that the order is too severe since this is his first offense; Appellant did not instigate any physical contact with Schultz until after he had kicked Appellant; even then Appellant only used the bucket in self-defense (if, in fact, he did use a bucket) when Schultz was on top of Appellant holding him down; and the hearing should have been held in New York while the ship was there so that Appellant could have confronted the complaining witness in person.

OPINION

The above facts show that Appellant was the aggressor in that he initiated the physical contact with Schultz while he was lying in his bunk and that subsequent events did not give Appellant the right to wield a metal bucket to subdue Schultz. Appellant could not reasonably have been in grave danger as evidenced by the facts that Schultz had no weapon and Appellant did not receive any injury serious enough to require treatment. Hence, there was no justification for using the bucket in such a manner as to inflict a serious injury on Schultz. Appellant's role as the aggressor is indicated clearly by the facts that he first challenged to fight; Appellant prepared himself by removing his watch and glasses in anticipation of a fight; Schultz at first refused the offer while holding on to a pipe in order to avoid fighting by staying in his bunk; and Schultz could not have kicked Appellant unless he had approached close to the upper bunk. Under these circumstances, Appellant cannot claim that it later became necessary for him to use a bucket as a weapon against Schultz, a man of about the same age and weight as Appellant, who was fighting with his fists.

There is no question concerning the sufficiency of the evidence since the testimony of Appellant's friend, seaman Bilk, supports the above findings in all material respects. Bilk

repeatedly testified that Appellant struck Schultz with the bucket (R.10, 19). Appellant did not deny this in his testimony. He merely stated that he did not remember doing it. Hence, there is no testimony which contradicts the statements of Schultz and Bilk that Appellant did strike Schultz with the bucket. The resultant injury is conclusive evidence that this was done in a violent manner.

With respect to Appellant's contention that the hearing should have been held in New York while the ship was there, it is noted, as mentioned above, that the voyage ended at San Francisco. Appellant did not raise this contention at the hearing in San Francisco. On the contrary, he did not object to the introduction in evidence of the statement from Schultz which was taken in New York. Another reason why the hearing could not have been held when the ship stopped at New York is because Schultz had not been repatriated by the time the ship had departed from New York on her way to San Francisco. For these reasons, the contention has no merit at this time.

Despite Appellant's prior clear record, it is not considered that the order of six month's suspension is excessive for an offense of this nature which resulted in the hospitalization of a crew member for eight days.

ORDER

The order of the Examiner dated at San Francisco, California, on 1 February 1957, is AFFIRMED

A. C. Richmond
Vice Admiral United States Coast Guard
Commandant

Dated at Washington, D. C., this 20th day of August, 1957.